

**Memorandum of Understanding
Between
County of Sonoma
and the
Town of Windsor**

This Memorandum of Understanding (hereinafter “MOU”), dated as of _____, 2021 (hereinafter “Effective Date”) is by and between the County of Sonoma (hereinafter “County”) and the Town of Windsor (hereinafter “Town”).

WHEREAS, Town has adopted an ordinance and a program for a Tobacco Retail License within the Town, modeled in part upon the Licensure of Tobacco Retailers ordinance adopted by County;

WHEREAS, the adopted Tobacco Retail License ordinance (hereinafter “TRL”) sets forth the Town’s licensing program to control all sales and exchanges for any form of consideration of tobacco, tobacco products, or tobacco paraphernalia as defined therein, without regard to the quantity of tobacco, tobacco products, or tobacco paraphernalia sold, offered for sale, exchanged, or offered for exchange;

WHEREAS, Town of Windsor Ordinance Number 2018-323, Section 3-11-110 (Delegation of Administrative and Enforcement Authority) delegates to the County’s Department of Health Services (DHS) the authority and responsibility to administer and enforce the regulation and sale of tobacco products and paraphernalia requiring a tobacco retail license;

WHEREAS, County has been providing administration and enforcement services associated with the regulation and sale of tobacco products and paraphernalia requiring a tobacco retail license to Town via memorandum of understanding since June 11, 2018; and

WHEREAS, County has the expertise and staff to provide such services and is willing to continue to provide such services.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

1. County Roles and Responsibilities

County’s Department of Health Services shall administer and enforce Town’s TRL as set forth herein. County’s responsibilities shall consist of the following:

- Assume primary responsibility for set-up, education, compliance monitoring, and communications and collaborations with Town staff.
- Utilize County’s database and protocols to support and track Town's TRL applicants/licenseses and monitor California Department of Tax and Fee Administration for license expiration.
- Conduct introductory mailing for retailers to educate them on new requirements and available technical assistance.
- Receive and process applications, collect fees for licensure and for annual renewals, and prepare and mail licenses.

- Conduct site visits (one annually) and additional communications and/or visits with retailers for any needed follow-up.
- Prepare and deliver appropriate violation notices.
- Conduct hearings as requested prior to suspension or revocation of licenses.
- Coordinate any appeal hearing process with related Town staff and the public.
- Communicate with Town Manager/Town Council on compliance status of retailers as requested and as issues arise.
- Provide pricing or other tobacco product information as mutually agreed.
- County shall abide by the Town's Logo Use Agreement and use the Town's name and official logo on program materials. The Logo Use Agreement is attached hereto as Exhibit A (hereinafter "Exhibit A").

2. Town Roles and Responsibilities

Town staff or the Town Council, as appropriate, shall have the following responsibilities:

- Refer license applications and inquiries to County.
- Maintain the Town Master Fee Schedule.
- Respond to County requests for interpretation of the TRL.
- Coordinate appeals to the Town Council.
- Authorize County's use of the Town name and official logo on program materials in accordance with Exhibit A (Logo Use Agreement).
- Establish TRL licensure fees and ensure compliance with all applicable laws and regulations.

3. Payment

County shall receive and retain license fees from retail licensees in accordance with the Town Master Fee Schedule.

4. Term and Termination

4.1. The term of this MOU shall be from July 1, 2021 through June 30, 2026.

4.2. Either party may terminate this MOU for convenience and without cause upon thirty (30) days' advance written notice. In the event of such termination by Town, County shall receive compensation for any services performed through the effective date of termination, unless a shorter notice period is agreed upon.

5. Confidentiality

Both parties agree to maintain the confidentiality of all client information in accordance with all applicable State and Federal laws and regulations.

6. Dispute Resolution

If any conflicts or disputes arise between the parties to this MOU, each party shall assign staff to meet with the other party in a timely manner to resolve the conflict or dispute.

7. Indemnification

Each party shall indemnify, defend, protect, hold harmless, and release the other, its officers, agents, and employees, from and against any and all claims, loss, proceedings, damages, causes of action, liability, costs, or expense (including attorneys' fees and witness costs) arising from or in connection with, or caused by any act, omission, or negligence of such indemnifying party or its agents, employees, contractors, subcontractors, or invitees. This indemnification obligation shall not be limited in any way by any limitation on the amount or type of damages or compensation payable to or for the indemnifying party under workers' compensation acts, disability benefit acts, or other employee benefit acts. This indemnity provision survives the MOU.

8. Method and Place of Giving Notice, Submitting Bills, and Making Payments

All notices, bills, and payments shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices, bills, and payments shall be addressed as follows:

To County: Terese Voge Health Program Manager 625 5th Street 707 565-6682 Terese.voge@sonoma-county.org	To Town: Tim Ricard Economic Development Manager Town of Windsor 9291 Old Redwood Highway Windsor CA 95492 707.838.5339 tricard@townofwindsor.com
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When a notice, bill, or payment is given by a generally recognized overnight courier service, the notice, bill, or payment shall be deemed received on the next business day. When a copy of a notice, bill, or payment is sent by facsimile or email, the notice, bill, or payment shall be deemed received upon transmission as long as: (1) the original copy of the notice, bill, or payment is promptly deposited in the U.S. Mail and postmarked on the date of the facsimile or email (for a payment, on or before the due date); (2) the sender has a written confirmation of the facsimile transmission or email; and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices, bills, and payments shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this Section 8.

9. Extra or Changed Work

Extra or changed work or other changes to the MOU may be authorized only by written amendment to this MOU, signed by both parties. Minor changes, which do not increase the amount paid under this MOU and which do not significantly change the scope of work or significantly lengthen time scheduled, may be executed by the Director of the County Department of Health Services and the Town Manager, in a form approved by County Counsel and the Town Attorney, respectively. The Board of Supervisors must authorize all other extra or changed work on behalf of County. The parties expressly recognize that, pursuant to Sonoma County Code Section 1-11, County personnel are without authorization to order extra or changed work or waive MOU requirements.

10. Merger

This writing, including any exhibits hereto, is intended both as the final expression of the MOU between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the MOU. Each party acknowledges that, in entering into this MOU, it has not relied on any representation or undertaking, whether oral or in writing, other than those which are expressly set forth in this MOU. No modification of this MOU shall be effective unless and until such modification is evidenced by a writing signed by both parties.

11. No Third Party Beneficiaries

The parties hereto agree and acknowledge that this MOU does not provide for any intended third-party beneficiaries and no suit against either party may be based on such a claim. This MOU shall be enforceable only by the parties hereto.

12. Tobacco Retail License Ordinance Amendments

Any and all changes or proposed changes to the TRL shall be promptly communicated to County with sufficient notice to accommodate administrative adjustments that may become necessary.

13. Severability

If any term, provision, or condition of this MOU is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this MOU shall continue in full force and effect unless the rights and obligations of the parties hereto have been materially altered or abridged thereby.

IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the Effective Date.

Town of Windsor:

Ken McNab
Town Manager

Date

Recommended for Approval:

Jeneen Petersen,
Administrative Services Director

Date

Approved As to Form:

Jose Sanchez
Town Attorney

Date

County of Sonoma:

Director or Designee
Department of Health Services

Date

Approved as to Substance:

Division Director or Designee

Date

Approved as to Form:

Adam Radtke, Deputy

County Counsel

September 8, 2021
Date

Exhibit A. Logo Use Agreement

This Logo Use Agreement (“Agreement”) is made and entered into by and between Town and County as part of this MOU. Town and County are referred to collectively herein as the “Parties.”

Town hereby grants to County a non-exclusive license and permission to use and display the Windsor Logo, but only in the form and in accordance with the following terms and conditions:

1. County shall use and display the Logo for the specific term July 1, 2021 through June 30, 2026.
2. County shall at all times preserve the distinctiveness of the Logo and will not, without Town’s prior written consent: (a) make any alteration to the Logo, (b) use or adapt the Logo as part of another graphic symbol or mark, (c) use the Logo in proximity to or in conjunction with another graphic symbol or mark, or (d) use the Logo for any commercial purpose whatsoever.
3. If the Town so requests, County shall include in its use thereof, a written indication that the Logo is the property of, and is used by, County, under authorization from the Town.
4. During the term hereof, County shall not grant permission to any other person or entity to use the Logo or assign any rights County may have hereunder.
5. During the term hereof and upon reasonable written notice from the Town, County shall make available to the Town, without expense to the Town: (a) samples of any product on which the Logo is used; and (b) information with respect to any particular product of a third party authorized by County where the Logo is used or placed, to inspect its use.
6. County acknowledges that the Town assumes no liability whatsoever in respect of County’s use of the Logo, and County hereby releases and discharges, to the maximum extent permitted by law, the Town and its elected and appointed officials, officers, employees and agents (collectively, “Indemnitees”), with respect to any such liability.
7. County hereby agrees to indemnify, defend and hold harmless Indemnitees from and against any and all claims, actions, causes of action, complaints, damages, expenses or costs whatsoever, including, without limitation, attorneys’ fees and costs of litigation, that Indemnitees may sustain or incur by reason of County’s use of the Logo.
8. Town may terminate this Agreement and County’s right to use the Logo: (a) immediately upon County’s default of this Agreement and failure to cure said default within 24 hours of Town having given notice in writing to County; or (b) at any time, upon the giving of 10 days’ notice in writing to County.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to principles of conflicts of laws. Venue for any court action shall be the Sonoma County Superior Court or the United States District Court for the District of Northern California, as applicable.
10. Except as otherwise specified in this Agreement, all notices pursuant to this Agreement shall be made in writing and sent to the Parties at their respective addresses specified below or to such other address as a Party may designate by written notice delivered in accordance with this Section. All such notices shall be sent by: (i) personal delivery, with notice effective upon delivery; (ii) certified or registered mail, return receipt requested, in which case notice shall be

deemed delivered on receipt if delivery is confirmed by a return receipt; or (iii) nationally recognized overnight courier, with charges prepaid or charged to sender's account, in which case notice is effective on delivery if delivery is confirmed by the courier service.

<p>To County:</p> <p>Terese Voge Health Program Manager 625 5th Street 707 565-6682 Terese.voge@sonoma-county.org</p>	<p>To Town:</p> <p>Tim Ricard Economic Development Manager Town of Windsor 9291 Old Redwood Highway Windsor CA 95492 707.838.5339 tricard@townofwindsor.com</p>
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11. This Agreement, including any exhibits hereto, which are incorporated herein by reference, contains the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all prior written or oral agreements, understandings, representations or statements between the Parties with respect to the subject matter hereof.

12. If any term, provision, or condition of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect unless the rights and obligations of the Parties have been materially altered or abridged thereby.